Filed 12/1/16 In re R.F. CA2/2

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re R.F., a Person Coming Under the Juvenile Court Law.	B265639 (Los Angeles County Super. Ct. No. CK64965)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. VICTORIA F., Defendant and Appellant.	

APPEAL from findings and an order of the Superior Court of Los Angeles County. Emma Castro, Juvenile Court Referee. Affirmed and remanded with directions.

Nancy Rabin Brucker, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Tracey F. Dodds, Principal Deputy County Counsel, for Plaintiff and Respondent.

Victoria F. (mother) appeals from jurisdictional findings and a dispositional order removing her daughter, R.F. (R., born Apr. 2012), from her custody and denying her reunification services. (Welf. & Inst. Code, § 300, subd. (b).)[1] She contends that the juvenile court's findings and order must be reversed because the Department of Children and Family Services (DCFS) and juvenile court failed to comply with the notice requirements of the Indian Child Welfare Act (ICWA).

We affirm, but remand the matter for compliance with ICWA.

FACTUAL[2] AND PROCEDURAL BACKGROUND

Detention

On December 23, 2014, DCFS filed a petition pursuant to section 300 alleging that R. needed the protection of the juvenile court. A first amended petition was filed on January 22, 2015. The adjudication of the petition commenced on June 22, 2015. Following the presentation of evidence and argument, on June 26, 2015, the trial court found the allegations of the amended section 300 petition to be true. R. was declared a dependent of the juvenile court. It found that there was a substantial danger if she were returned to her parents and that there were no reasonable services to protect her without removing her from her parents' custody. Mother was not granted reunification services. Mother timely appealed.

ICWA Facts

The maternal grandmother completed the ICWA questionnaire and stated that R. had no Native American ancestry. On December 23, 2014, R.'s father, G.C. (father), indicated that his paternal great-grandmother was 50 percent Tewa tribe. His attorney represented that the paternal grandmother, who was present at that hearing, indicated that her brother recently looked into their family history and found that father's grandmother

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[1] All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

[2] Since mother only raises an ICWA notice error, the factual summary is largely focused on facts related to ICWA compliance.

was half-Tewa. DCFS was ordered to interview father and further investigate possible Native American heritage.

The paternal grandmother reported that some investigation was done by her brother as to possible Indian heritage. Her mother, Grace, was born in Taos, New Mexico, and was half-Tewa Indian. Grace's mother, Rose, may have been full-blooded Tewa. The paternal grandmother remembered that her father would have visitors who came dressed in traditional Indian clothes. She would have her brother and sister call the social worker.

On March 17, 2015, the juvenile court made a further inquiry regarding possible Indian heritage. Father told the juvenile court that his mother either had to talk to her brother or aunt to get the information. He stated that the paternal grandmother had been born in Colorado. The juvenile court stated: "This is your responsibility today. I'm going to give you this responsibility. I want you to call the social worker by the end of today and tell the social worker, after you speak with your mother, what information you have regarding possible American Indian heritage. If it's just information in the family but you can't identify a name and a birthdate of a relative and the tribe, you need to let the social worker know that. [¶] If you can do all of those things or some of those things, that would be very helpful to the court on this issue of whether or not the [ICWA] applies to your child."

Despite the juvenile court's instruction, father did not provide the requested information. The social worker contacted the paternal grandmother at the end of February to get basic information about her relatives, such as their dates of birth. She did not have that information and refused to provide the name and telephone number of her brother, who was supposed to have more detailed ICWA information.

DISCUSSION

The sole issue on appeal is whether the juvenile court failed to comply with the notice requirements of the ICWA.

"The ICWA, enacted by Congress in 1978, is intended to 'protect the best interests of Indian children and to promote the stability and security of Indian tribes and families.'

[Citation.] 'The ICWA presumes it is in the best interests of the child to retain tribal ties and cultural heritage and in the interest of the tribe to preserve its future generations, a most important resource.' [Citation.]

"'The ICWA confers on tribes the right to intervene at any point in state court dependency proceedings. [Citations.] "Of course, the tribe's right to assert jurisdiction over the proceeding or to intervene in it is meaningless if the tribe has no notice that the action is pending." [Citation.] "Notice ensures the tribe will be afforded the opportunity to assert its rights under the [ICWA] irrespective of the position of the parents, Indian custodian or state agencies." [Citation.]' [Citation.]" (*In re Karla C.* (2003) 113 Cal.App.4th 166, 173–174; see also *In re H.A.* (2002) 103 Cal.App.4th 1206, 1210.)

The ICWA contains the following notice provision: "In any involuntary proceeding in a State court, where the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of, or termination of parental rights to, an Indian child shall notify the parent or Indian custodian and the Indian child's tribe, by registered mail with return receipt requested, of the pending proceedings and of their right of intervention. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, such notice shall be given to the Secretary in like manner, who shall have fifteen days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe. No foster care placement or termination of parental rights proceeding shall be held until at least ten days after receipt of notice by the parent or Indian custodian and the tribe or the Secretary: *Provided*, That the parent or Indian custodian or the tribe shall, upon request, be granted up to twenty additional days to prepare for such proceeding." (25 U.S.C. § 1912(a).)

The juvenile court and DCFS "have an affirmative and continuing duty to inquire whether a child . . . is or may be an Indian child." (§ 224.3, subd. (a); Cal. Rules of Court, rule 5.481(a).) That inquiry includes, inter alia, interviewing the parents and extended family members to gather as much information as reasonably possible in order to satisfy the ICWA. (Cal. Rules of Court, rule 5.481(a)(4).)

Applying the foregoing legal principles, we agree with mother that the ICWA notice requirements were triggered and were not satisfied. (25 U.S.C. § 1912(a); see, e.g., *In re Kahlen W.* (1991) 233 Cal.App.3d 1414, 1422; *In re Antoinette S.* (2002) 104 Cal.App.4th 1401, 1408; *In re Nikki R.* (2003) 106 Cal.App.4th 844, 848.) On December 23, 2014, the juvenile court was informed that there was "Tewa tribe" heritage on father's side. While on March 17, 2015, the juvenile court put the onus on father to provide more detailed information, father never followed through.[3] DCFS did follow up with the paternal grandmother, but she did not provide additional information. Frustrating as it may be, further inquiry regarding R.'s potential Indian ancestry should have been made. (*In re Gabriel G.* (2012) 206 Cal.App.4th 1160, 1165.) Although the paternal grandmother refused to provide the paternal great-uncle's contact information, DCFS could have attempted to obtain this information from father. And the paternal great-uncle was the person who supposedly had information about the family's Indian ancestry.

In urging us to affirm, DCFS argues that claiming Tewa ancestry did not trigger an obligation to provide notice because there is no Tewa tribe to notice. In fact, mother concedes that there is no federally-recognized Tewa tribe. We perceive two flaws with this position. First, setting aside the issue of which tribe, if any, to notice, the juvenile court should have ordered DCFS to conduct a further inquiry into father's Indian heritage. Perhaps that investigation would have revealed to which Indian tribe R. is related.

Second, as both parties point out, there have been efforts by the Tiwa's[4] of New Mexico seeking federal recognition. The Tiwas may be part of the Pueblos of Santa Clara, San Idelfonso, Tesuque, Pojoaque, and Nambe, tribes that appear on the Federal Register. (Notices, 81 Fed.Reg. 26826, 26829 (May 4, 2016).) With information from

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3 The burden was on DCFS, not father, to obtain all possible information about R.'s potential Indian background. (*In re Louis S.* (2004) 117 Cal.App.4th 622, 631.)

4 "Tiwa" appears to be an alternative spelling of "Tewa."

the paternal great-uncle, DCFS can hopefully determine which Tewa-related tribe to notice.

We follow the rule that when there is a failure to follow the ICWA procedures before disposition, all jurisdictional and dispositional orders remain in effect and the matter is remanded "for [DCFS] to comply with the notice requirements of the ICWA, with directions to the juvenile court depending on the outcome of such notice. If, after proper notice is given under the ICWA, [the child] is determined not to be an Indian child and the ICWA does not apply, prior defective notice becomes harmless error. . . . Alternatively, after proper notice under the ICWA, if [the child] is determined to be an Indian child and the ICWA applies to these proceedings, [a party] can then petition the juvenile court to invalidate orders" that violate the ICWA. (*In re Brooke C.* (2005) 127 Cal.App.4th 377, 385; 25 U.S.C. § 1914.)

DISPOSITION

The juvenile court's findings and order are affirmed. Upon remand, the juvenile court shall order DCFS to comply with the inquiry and notice provisions of the ICWA. If, after proper notice is given, the juvenile court determines that R. is an Indian child and the ICWA applies, R. or her parents may petition the juvenile court to invalidate the orders that violate the ICWA.

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_____, J.
ASHMANN-GERST

We concur:

_____, P. J.
BOREN

_____, J.
CHAVEZ